

HOUSE BILL REPORT

ESHB 1886

As Passed House:

March 11, 2009

Title: An act relating to flood control districts.

Brief Description: Concerning flood control districts.

Sponsors: House Committee on Local Government & Housing (originally sponsored by Representative Takko).

Brief History:

Committee Activity:

Local Government & Housing: 2/12/09, 2/16/09 [DPS].

Floor Activity

Passed House: 3/11/09, 97-0.

Brief Summary of Engrossed Substitute Bill

- Makes numerous changes and additions to provisions regarding flood control districts.
- Specifies procedures for public bidding for contracts.
- Specifies provisions regarding board meetings, office location, and annexation of new territory.
- Changes the month when the secretary of the board of directors makes a budget forecast from November to December.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Short.

Staff: Sara del Moral (786-7291) and Thamas Osborn (786-7129)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Flood Control Districts.

Flood control districts (district) provide for the control of a watershed or tidal area. The territory of a district may encompass all or part of one or more counties.

A district has a number of duties, including the planning, construction, and maintenance of dams, dikes, and other infrastructure necessary for flood control. The district must also cooperate with state and federal agencies to reduce flood risk.

Board of Directors.

A board of directors (board) consisting of three members manages each district. One of these members must serve as chairman.

Each board also has a secretary, who may be either a board member or voter from the district.

The board must:

- adopt a district seal;
- manage and conduct business affairs;
- employ staff as necessary;
- establish bylaws, rules, and regulations; and
- perform any other acts required to carry out the district's duties.

The board may not change the day of the annual meeting without receiving consent from the county, passing a resolution, and posting public notice.

A majority of the board may call a special meeting at any time, as long as certain procedures are followed.

All board meetings must be public, and all board records must be publicly available. The bylaws, rules and regulations of the board must be available in print form for distribution.

Installment Contracts.

A district may contract for construction, services, or materials. Payments may be made in monthly installments. A board may determine the installment amount.

Public Bidding Procedures.

Contracts for construction, labor, or materials must be awarded through a public bidding process. The board must run a public announcement in a newspaper for at least two weeks before opening the bidding process. Bidders must include a certified check with bids as a guarantee of compliance. The board must award the contract to the lowest and best responsible bidder.

However, the board has authority to reject any or all bids. In this case, it must readvertise for bids, following the same procedure as before. If the board then fails to receive a satisfactory bid, it may then proceed to construct by force account.

Contractor's Bond.

A successful bidder awarded a contract of at least \$1,000 enters into a bond for the full value of the contract with the state. The bond is conditioned for the faithful performance of the contract. The state and federal governments are exempted from this provision.

Office Location.

The board must designate a location for its office within the boundaries of the district, if possible. However, if no place convenient and suitable for district business and public hearings is available within the district, the office may be located in the county encompassing most of the district territory (county).

If a board wants to change the location of its office, it must meet the following conditions:

- the county legislative authority must grant consent;
- the board must pass a resolution to move its office; and
- the board must post public notices near its current office and its proposed new office at least 10 days prior to relocating.

Budget Forecasts.

By November 1 of each year, the secretary must:

- estimate the fundraising needs for the subsequent year, based upon a budget furnished by the board; and
- submit this information to the county legislative authority.

Once the county legislative authority has approved the board's budget, the secretary must prepare an assessment roll listing all lands shown on the base assessment map.

Annexation Procedures.

A district may annex contiguous territory employing the following methods:

- petition and election;
- resolution and election; and
- direct petition.

To use the petition and election method, a petition signed by at least 10 property owners in the proposed annexation area must be filed with the board. To use the resolution and election method, a resolution must be adopted requesting the annexation of the board.

In both of these cases, in the event the board approves the request, an election must be held to put the question to voters. For annexation to occur, a majority of voters must approve a ballot proposition favoring annexation.

Under the direct petition method, annexation occurs if the owners of the majority of territory in the proposed annexation area sign a petition requesting annexation and the board approves.

Summary of Engrossed Substitute Bill:

Board of Directors.

A board must elect a vice-chair.

Provisions regarding the powers and duties of the board are changed. The duty to adopt a seal is removed. Additionally, the board is required to hold:

- regular meetings at least once a year; and
- open meetings in accordance with the Open Public Meetings Act.

Installment Contracts.

Contracts for maintenance are added to the types of contracts that may be paid in installments.

For all contracts other than those for materials, the district must withhold 5 percent of each payment until the contract is complete.

Public Bidding Procedures.

A provision is added that a public bidding process is required for maintenance contracts.

At least 14 days before the submission deadline, a notice calling for proposals must be published in a newspaper *at least once*.

New requirements are specified for bidders. They must:

- make bids in writing;
- file bids at a location specified in the notice; and
- submit a deposit equal to 5 percent of the total proposed project cost.

The board must:

- open and read bid proposals in public at a time and location specified in the notice; and
- file bids in its official records and make them publicly available.

A successful bidder forfeits the deposit amount if he or she fails to:

- enter a contract; and
- furnish a satisfactory performance bond within the agreed upon time frame.

In the event the district does not receive a satisfactory bid after soliciting two rounds of bids in this manner, the district may complete the project by an agreed price, as well as by force account.

Three Bids Required for Projects.

For projects costing at least \$50,000, the district must receive at least three formal bids. This requirement does not apply in cases where three bidders are not available or where the contract price is less than \$5,000.

However, a district may, in all cases:

- use volunteer labor and equipment, providing reimbursement for actual expenses; or
- enter an interlocal agreement for construction or maintenance.

Contractor's Bond.

The following changes are made to provisions regarding a contractor's bond with the state:

- The state and federal governments are no longer exempted from these provisions.
- The minimum contract value for a person to enter a bond with the state is increased from \$1,000 to \$5,000.
- Contracts for materials are no longer included in these provisions. However, contracts for maintenance are added.

Office Location.

Requirements for a board desiring to change office location are removed.

Budget Forecasts.

The annual deadline for a secretary to submit a budget forecast to a county legislative authority is changed from November 1 to December 1.

The secretary must base the financial forecast on a budget. However, the board is no longer required to provide this budget.

Annexation Procedures.

A new annexation method is added. A district must meet a number of specific requirements to annex contiguous territory. Briefly, it must:

- adopt a resolution;
- publish notice in a newspaper;
- hold a public hearing; and
- recommend the annexation to the county legislative authority.

The county legislative authority must then hold a public hearing on the proposal as follows:

- it must notify all property owners in the annexation area by mail; and
- notice must be mailed 21 to 28 days before the hearing.

After the hearing, the county legislative authority may either:

- reject the proposal; or
- approve or modify the proposal and adopt it by ordinance.

Contiguous Territory.

Territory is considered contiguous to the district territory if it is bounded by the same river, lake, or other body of water that bounds the district territory.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill straightens out language in old statutes. It changes the law to be consistent with the Open Public Meetings Act and the Open Public Records Act. To change office location, current statute requires approval from the Board of County Commissioners, and public notices posted in the old and new locations. Such procedures are already provided for in the Open Public Meetings Act. The bill changes the month when a secretary makes a financial forecast from November to December so as to be consistent with provisions for special districts. This would fix a conflict in the current law. The bill makes provisions similar to those for cities. The bill allows a board to hire a secretary, rather than choose a voter from the district. It eliminates the need for a district seal and for bylaws. With this bill, a district could have rules, not bylaws. Some districts have had trouble getting bidders. Changes in the bill would make this process easier. The bill changes annexation procedures so that territory may be annexed without a referendum or a petition from property owners. Districts need to be able to annex the areas they serve.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor; and Kenneth Stone, Cowlitz County.

Persons Signed In To Testify But Not Testifying: None.